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and National Store Retail Services, LLC*

**UNITED STATES BANKRUPTCY COURT**

# FOR THE DISTRICT OF NEVADA

In re:  
NATIONAL MERCHANDISING SERVICES,  
LLC

Case No.: BK-S-19-15172-ABL  
Chapter 11

Jointly administered with:

Edward S. Burdekin, Case No. BK-S-15174-ABL; and

National Store Retail Services, LLC,  
Case No. BK-S-15175-MKN

Affects this Debtor.

Affects all Debtors.

☒ Affects Edward S. Burdekin.

Affects National Store Retail Services, LLC

**APPLICATION FOR ENTRY OF AN  
ORDER AUTHORIZING THE  
EMPLOYMENT AND RETENTION OF  
WIGGAM & GEER, LLC AS ATTORNEYS  
FOR THE DEBTOR-IN-POSSESSION,  
NUNC PRO TUNC AS OF THE PETITION  
DATE**

Date: October 15, 2019

Time: 9:30 a.m.

Place: 300 Las Vegas Blvd.

Las Vegas, NV

Courtroom 1

Edward Steven Burdekin, (“Burdekin”), debtor and debtor-in-possession, and National Store Retail Services, LLC, a Georgia limited liability company, (“NSRS”, and, together with Burdekin, the “Debtors”), by and through their proposed counsel, Wiggam & Geer, LLC. (“Geer Law Firm”),

1 hereby request entry of an order pursuant to Sections 327(a), 328, 329, and 331, and FRBP 2014 and  
 2 2016 authorizing the employment and retention of Geer Law Firm nunc pro tunc as of the Petition Date  
 3 as its general reorganization counsel.<sup>1</sup>

4 This Application is supported by: the following Memorandum of Points and Authorities; the  
 5 Declaration of Will B. Geer, Esq. (“Geer Declaration”), filed contemporaneously herewith; all papers  
 6 and pleadings filed in the above-captioned case, judicial notice of which is requested pursuant to Rule  
 7 201 of the Federal Rules of Evidence; and any arguments of counsel offered in support of the Motion  
 8 during any hearing held on the Application.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. Jurisdiction**

11 The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in  
 12 the District of Nevada is proper pursuant to 28 U.S.C. § 1409.

13 This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). If it is determined  
 14 that the Court cannot enter final orders or judgment in this core proceeding consistent with Article III  
 15 of the United States Constitution, the Debtors consent to the entry of final orders or judgment by this  
 16 Court.

17 The relief requested herein is premised on Sections 327(a), 328, 329, and 331, and 1107(a) of  
 18 FRBP 2014 and 2016.

19 **II. Background**

20 1. On August 10, 2019, NSRS filed a voluntary petition (the “NSRS Chapter 11 Case”).  
 21 Burdekin commenced his case on August 10, 2019 (the “Burdekin Chapter 11 Case”, and, together the  
 22 “Chapter 11 Cases”). The Chapter 11 Cases are jointly administered with National Merchandising  
 23 Services, LLC (“NMS”), a Nevada limited liability company (the “Lead Chapter 11 Case”). The  
 24 Chapter 11 Cases have been consolidated for procedural purposes under the Lead Chapter 11 Case.

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25 <sup>1</sup> When used herein, all references to “ECF No.” are to the numbers assigned to the documents  
 26 filed in the case as they appear on the docket in the above-captioned case. All references to “Section”  
 27 are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All References to “FRBP” are  
 to the Federal Rules of Bankruptcy Procedure. All references to “LR” are to the Local Rules of  
 Bankruptcy Practice for the United States District Court for the District of Nevada.



1                   National Merchandising Services, LLC

2                   2.       NMS executes business to business services to its clients primarily through  
 3       merchandising, auditing, project assembly and other in-store or in-home work, which is provided by  
 4       independent contractors provided by NSRS. NMS administers these services through local, regional,  
 5       district and other personnel. NMS employs ten people. Besides Burdekin, NMS employs three  
 6       coordinators, one daytime manager, one nighttime manager, a secretary, and three schedulers.

7                   3.       NMS is owned by National Merchandising of America, Inc., a Georgia corporation  
 8       (49%) and Spar NMS Holdings, Inc., a Nevada corporation.

9                   4.       NMS has two primarily clients, Advance Auto (representing about 17% of NMS  
 10      business), and Dollar General (representing about 80% of NMS business).

11                  5.       Burdekin has been the President and Chief Executive Office of NMS since about the  
 12      time it began engaging in this business in 2012, and has operated NMS since that time.

13                   National Store Retail Services, LLC

14                  6.       NMS contracts field work to NSRS who in turn currently provides over 100 field  
 15      workers to NMS customers.

16                  7.       Burdekin owns 100% of NSRS. Burdekin is also the sole manager, president and CEO  
 17      of NSRS, and Burdekin has operated NSRS since its inception

18                  8.       The Debtors' businesses are interdependent, both financially and operationally.  
 19      Burdekin is employed by and operates NMS. NMS's operations are dependent upon NSRS providing  
 20      field service workers to NMS customers. NSRS's revenue is dependent on NMS business operations.  
 21      Burdekin's income is derived from operating both NMS and NSRS. Threats against Debtors are  
 22      intertwined and claims, if any, will be made against Debtors and will need to be resolved in a collective  
 23      process together.

24                  The Debtors, through their Chapter 11 Cases, are seeking to reorganize debt associated with its  
 25      multiple businesses. The Debtors have filed the Chapter 11 Cases and sought bankruptcy protection so  
 26      they can attempt to reorganize all claims against them in a fair and transparent manner, while  
 27      maintaining its ongoing business operations.





### **III. Relief Requested**

By this Application, the Debtors request entry of an order authorizing it to employ and retain Geer Law Firm, nunc pro tunc as of the petition date, to represent the Debtors as their bankruptcy counsel in connection with the prosecution of the Chapter 11 Cases according to the terms and conditions contained within that certain engagement agreements dated August 9, 2019 (the “Engagement Agreements”). The copies of the Engagement Agreements are attached to the Geer Declaration as **Exhibit 1**.

Prior to commencement of the Chapter 11 Cases, on or about July 22, 2019, the Debtors sought from Geer Law Firm advice regarding its deteriorating financial situation, threatening litigation, options in addressing its liabilities, and the possibility of reorganization through bankruptcy. Thereafter, the Debtors decided to retain Geer Law Firm as their bankruptcy reorganization counsel. Indeed, the Debtors assert representation of it by Geer Law Firm is of critical importance to Debtors' efforts to address their debts through bankruptcy, as Geer Law Firm has the legal expertise necessary to represent the Debtors for purposes of the Chapter 11 Cases.

Debtors selected Geer Law Firm because of the firm's experience with and knowledge of bankruptcy matters, including representation of debtors, creditors, and bankruptcy trustees in a wide variety of bankruptcy cases, as well as Geer Law Firm's knowledge of the Debtors' businesses. Because the Chapter 11 Cases require a significant amount of attention in the very-near term, the Debtors believe Geer Law Firm's proposed representation of Debtors is critical to it achieving a successful outcome in the Chapter 11 Cases. For this same reason, the Debtors wish to employ Geer Law Firm as their general reorganization counsel.

#### **IV. Scope of Proposed Representation**

Legal services provided by Geer Law Firm as general reorganization counsel are necessary to allow the Debtors to faithfully perform their duty as a debtors-in-possession and to allow Debtors to successfully reorganize and negotiate with creditors. Subject to further order of the Court, Geer Law Firm will provide, among others, the following legal services:

- 1 a) advise the Debtors with respect to its powers and duties as a debtors and  
2 debtors-in-possession in the continued management and operation of its  
business and property;
- 3 b) attend meetings and negotiate with representatives of creditors and other  
4 parties in interest and advise and consult on the conduct of the Chapter 11  
cases, including the legal and administrative requirements of operating in  
5 Chapter 11;
- 6 c) take all necessary action to protect and preserve the bankruptcy estate,  
7 including the prosecution of actions on its behalf, the defense of any actions  
8 commenced against the bankruptcy estate, negotiations concerning all  
litigation in which the Debtors may be involved, and objections to claims  
filed against the bankruptcy estate;
- 9 d) prepare on behalf of the Debtors all motions, applications, answers, orders,  
10 reports, and papers necessary to the administration of the estate;
- 11 e) negotiate and prepare on the Debtors' behalf plan(s) of reorganization,  
12 disclosure statement(s), and all related agreements and/or documents and  
13 take any necessary action on behalf of the Debtors to obtain confirmation  
of such plan(s);
- 14 f) advise the Debtors in connection with any sale of assets;
- 15 g) appear before this Court, any appellate courts, and the U.S. Trustee, and  
16 protect the interests of the bankruptcy estate before such courts and the U.S.  
17 Trustee; and
- 18 h) perform all other necessary legal services and provide all other necessary  
19 legal advice to the Debtors in connection with their Chapter 11 cases.

20 The above-described services are essential to the Debtors' successful reorganization, and, as  
such, it is necessary the Debtors employ general reorganization counsel to provide such legal services.  
21 Geer Law Firm is willing and able to act on behalf of and provide such services to Debtors.

## 22 V. Disinterestedness of Professionals

23 Prior to commencing its representation of the Debtors, the Debtors disclosed to Geer Law Firm  
24 its managers, members, officers, directors, shareholders, and creditors to determine any prior or present  
25 representation of any creditors or parties-in-interest. From such initial review, and continuing through  
26 the preparation of this Application, Geer Law Firm has continued to review the information provided  
27 by the Debtors to determine any prior or present representation of any creditors or parties-in-interest.

1 Geer Law Firm will conduct an ongoing review of its files to ensure that no disqualifying circumstances  
 2 arise, and Geer Law Firm will supplement its disclosure to the Court should any new relevant facts or  
 3 relationships be discovered.

4 To the best of Debtors' knowledge, and except as otherwise provided in the Geer Declaration,  
 5 Geer Law Firm and its attorneys: (i) do not have any connection with Debtors, its affiliates, creditors,  
 6 the United States Trustee or any person employed in the Office of the United States Trustee, or any  
 7 other party in interest or their respective attorneys and accounts, except as otherwise provided in the  
 8 Geer Declaration; (ii) are "disinterested persons" as such term is defined in Section 101(14); and (iii)  
 9 do not hold or represent any interest adverse to Debtors or Debtors' bankruptcy estate.

10 Specifically, and except as otherwise set forth in the Geer Declaration, if at all:

- 11 a) neither Geer Law Firm nor any attorney at the firm holds or represents an  
 12 interest adverse to Debtors' bankruptcy estate;
- 13 b) Neither Geer Law Firm nor any attorney at the firm is or was a creditor, an  
 14 equity holder or an insider of Debtors;
- 15 c) Neither Geer Law Firm nor any attorney at the firm is or was, within two  
 16 years before the Petition Date, a director, officer or employee of Debtors;
- 17 d) Geer Law Firm does not have an interest materially adverse to the interest  
 18 of the bankruptcy estate or of any class of creditors or equity holders, by  
 19 reason of any direct or indirect relationship to, connection with, or interest  
 20 in Debtors; and
- 21 e) No attorney at Geer Law firm is related to any United States District Judge  
 22 or United States Bankruptcy Judge for the District of Nevada or to the  
 23 United States Trustee for such district or to any known employee in the  
 24 office thereof.

25 Therefore, Geer Law Firm is a "disinterested person" as such term is defined by  
 26 Section 101(14), and its representation of the Debtors will not be adverse to the Debtors' estate.

#### 27 **VI. Professional Compensation**

28 The Firm was paid a retainer of \$20,000 by Edward Burdekin for his individual bankruptcy  
 29 case (the "Burdekin Retainer") and \$7,500 by NSRS for its bankruptcy case (the "NSRS Retainer").

1 \$16,720 of the Burdekin retainer remains in the Geer Law Firm's trust account, and \$5,140.00 of the  
2 NSRS retainer remains in the Geer Law Firm's trust account.

3 Through this Application, Geer Law Firm proposes to continue to hold such retainer, and to  
4 apply it to fees and expenses incurred by Geer Law Firm in this bankruptcy case, following Court  
5 approval of the same. Pursuant to the Engagement Agreements, Geer Law Firm will provide Debtors  
6 with regular, monthly statements detailing legal services rendered and costs and expenses disbursed on  
7 Debtors' behalf, with both interim and final payment of such invoices subject to Court approval, as set  
8 forth in the Engagement Agreements.

9 Geer Law Firm's fees are based on the hourly rates of the professionals working on the matter,  
10 which hourly rates are subject to annual adjustment, as well as the value of the firm's services to Debtor.  
11 As of the filing of this Application, the firm's prevailing hourly rates are as follows: for Will B. Geer,  
12 Esq., \$400; for Ceci Christy, Esq., \$350; and for paralegals \$130. Such rates are subject to an annual  
13 adjustment, per the Engagement Agreements. Geer Law Firm's prevailing hourly rates are designed to  
14 fairly and adequately compensate Geer Law Firm for the work performed and to cover fixed and routine  
15 overhead expenses incurred in the operation of the firm.

16 As Geer Law Firm does with other Clients, the firm will, in its discretion, charge Debtors for  
17 all other costs and expenses, including, without limitation, printing and duplication (at the rate of \$0.05  
18 per black and white impression and \$0.15 per color impression), travel, business meals (but never  
19 overtime meals), postage, delivery and courier services, computerized legal research, court fees,  
20 witness fees, and other fees related to trials and hearings. As near as possible, Debtors will be charged  
21 Geer Law Firm's actual cost for all cost and expense items incurred by the firm.

22 Geer Law Firm has agreed to accept as compensation such sums as may be allowed by the  
23 Court on the basis of the time spent, the rates charged for such services, the necessity of such services  
24 to the administration of the bankruptcy estate, the reasonableness of the time within which the services  
25 were performed in relation to the results achieved, and the complexity, importance, and nature of the  
26 problems, issues, or tasks addressed in the Chapter 11 Cases.

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1 In accordance with the terms of the Engagement Agreements, Debtors seek approval of the fee  
2 structure described herein pursuant to Section 328, which provides that a debtor “with the court’s  
3 approval, may employ or authorize the employment of a professional person under section 327 . . . on  
4 any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on  
5 a contingent fee basis.” 11 U.S.C. § 328(a). Accordingly, the fee structure set forth in the Engagement  
6 Agreements, and for which approval is sought herein, is permissible under Section 328(a). This fee  
7 structure is reasonable based on the customary compensation charged by comparably-skilled  
8 practitioners in cases outside of bankruptcy, as well as in similar cases under Chapter 11 of the  
9 Bankruptcy Code, and has been approved and implemented in other Chapter 11 cases.

10        Other than as set forth herein, no arrangement is proposed between Geer Law Firm and Debtors  
11 for compensation and reimbursement to be paid in the Chapter 11 Cases. Further, Geer Law Firm has  
12 no agreement with any other person or entity to share any compensation or reimbursement received,  
13 nor will Geer Law Firm agree to do so, except as may be hereafter permitted pursuant to Section  
14 504(b)(1).

## VII. Fee Applications

16                   Geer Law Firm will apply to the Court for allowance of compensation for professional services  
17 rendered and reimbursement of expenses incurred in the Chapter 11 Cases in accordance with the  
18 applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of Bankruptcy  
19 Practice and all orders of this Court. Geer Law Firm will seek compensation for the services of each  
20 attorney or paraprofessional acting on Debtors' behalf at the then-current prevailing hourly rate charged  
21 for such services on a non-bankruptcy matter, as such rates are described and/or modified by the  
22 Engagement Agreements.

23 Geer Law Firm will file interim requests for compensation and reimbursement as often as every  
24 120 days, pursuant to Section 331.

## IX. No Prior Request

26 Geer Law Firm has not previously requested the relief sought herein before this or any other  
27 court.

## **X. Need for Relief Nunc Pro Tunc**

The Debtors request approval of Geer Law Firm's employment nunc pro tunc to as of the commencement of the Chapter 11 Cases, as the firm will be required to perform legal services for the Debtors during the interim before the hearing date on this Application. Indeed, between the time of the filing of this Application and the hearing on the same, the Debtors, through counsel, prepared for and participated in Section 341 Meetings of Creditors, first day motions, and other substantive case administration issues. As a result, cause is present for relief nunc pro tunc.

## XI. Conclusion

Debtors submit the appointment of Geer Law Firm on the terms and conditions set forth herein is in the best interests of Debtors, the bankruptcy estate, Debtors' creditors, and all other parties-in-interest. Therefore, Debtors respectfully request entry of an order, substantially in the form of the proposed order attached hereto as **Exhibit 1**: (i) authorizing Debtors' employment and retention of

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1 Geer Law Firm as its counsel, nunc pro tunc, according to the terms and conditions as set forth in this  
2 Application and the Engagement Agreements; and (ii) granting such other and further relief as the  
3 Court deems just and proper.

4 Dated this 29th day of August, 2019.

5 Respectfully submitted by:

6 **WIGGAM & GEER, LLC.**

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